



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF LACONIA	:	
	:	
Complainant	:	
	:	CASE NO. A-0418:11
v.	:	
	:	DECISION NO. 93-29
AFSCME, LOCAL 534 on behalf	:	
of LACONIA PUBLIC WORKS	:	
EMPLOYEES	:	
	:	
Respondent	:	

APPEARANCES

Representing City of Laconia:

James L. Burke, Esq., Counsel

Representing AFSCME, Local 534:

Harriett Spencer, Staff Representative

BACKGROUND

The City of Laconia (City) filed a Petition for Declaratory Judgment on January 21, 1993 against Laconia Public Works Department Employees, AFSCME Local 534 (Union) alleging that the parties had concluded negotiations for a successor collective bargaining agreement (CBA) and ratified that agreement, but that the Union thereafter refused to sign that agreement. In lieu of filing a formal answer to the Petition, the Union filed an affidavit, included as part of the Petition, confirming the series of events set forth therein. This matter was then heard by the undersigned Hearing Officer on February 26, 1993.

FINDINGS OF FACT

1. The City of Laconia is a "public employer" of personnel employed by its Public Works Department as defined by RSA 273-A:1 X.
2. AFSCME, Local 534, Council 93 is the duly certified bargaining agent for personnel employed by the City of Laconia at its Public Works Department.
3. The City and the Union have a collective bargaining relationship, most recently reflected by a CBA effective on July 1, 1989 through June 30, 1992.
4. The parties commenced negotiations for a successor CBA on December 2, 1991 and subsequently reached agreement on all outstanding issues on May 27, 1992.
5. On June 4, 1992, the members of the bargaining unit met and voted to accept (i.e., ratified) the negotiated agreement. On June 8, 1992, the Union's negotiator throughout these proceedings, Harriett Spencer, notified the City's Personnel Director, Norman O'Neil, that the Union had voted to accept the agreement. On June 15, 1992 the Laconia City Council, knowledgeable of the Union's prior approval, voted unanimously to approve the agreement.
6. On June 24, 1992, O'Neil provided Spencer with a typed version of the agreement for her review. Because of personal matters beyond her control, Spencer was unavailable to attend to the review and execution of the contract in July and August of 1992. On September 11, 1992 O'Neil and Spencer conferred and set a meeting for September 18, 1992. During that meeting, O'Neil and Spencer discussed contract language as it should appear in the final draft. On September 29, 1992, O'Neil sent Spencer a final draft which included the agreed-upon language.
7. On November 12, 1992 Spencer sent a letter to O'Neil telling him that she had been instructed by the local to advise the City that the local would not sign the successor contract.
8. On December 10, 1992, Union representatives (Spencer, Archibald and Poudrier) and City representatives (O'Neil, McKeever, Kingston and Burke) met whereupon the City requested that the Union sign the ratified agreement. The Union refused.

9. Since the time of its original ratification vote on June 4, 1992, the union has never conveyed to the City that it has taken any action to invalidate or revoke that ratification process.
10. The City has attached no pre-conditions to its signing the successor contract which embodies the agreement of the parties with respect to the subject matter contained therein.
11. The Union and its local are aware of this Petition, have conferred full authority on its representative to participate in these proceedings, and assert no on-going claims of fraud, misrepresentation or any other irregularities with the form or content of the final draft of the successor CBA submitted for signing.
12. There is no dispute between the parties as to the occurrence and sequence of events set forth in the foregoing findings.

DECISION AND ORDER

The facts in this case are undisputed. The parties were facing the expiration of their CBA, entered into negotiations for a successor CBA, agreed on the terms of a successor CBA, and presented the terms of that successor CBA to their respective ratifying authorities with the result that both of those ratifying authorities approved the terms of the successor contract. Between the dates of the respective ratifications on June 4, 1992 for the Union and June 15, 1992 for the City and the date of hearing in this case (February 26, 1993) neither side had repudiated its earlier ratification or asserted any claims in justification or mitigation of a refusal to sign the final draft of the CBA. Both parties agreed before the hearing officer that the terms of the final draft were the terms agreed upon in the negotiations process and the terms which were ratified subject to being reduced to writing. There is no pending claim that the reduction of the agreement to writing in the form of the final draft was inconsistent with the parties' understanding or intent.

When all of the foregoing steps in the negotiation process have been accomplished, RSA 273-A:4 contemplates that the agreement "shall be reduced to writing." This is inclusive of signing the contract. In IBPO v. Town of Derry (Decision No. 83-47, September 26, 1983) the PELRB referenced two cases. First, from San Antonio Machine and Supply Co. v. NLRB, 363 F.2d 633, 667 (5th Cir. 1966), the PELRB noted "once an offeree accepts an offer, that offer becomes an agreement binding on both parties' subject to ratification." Ratification was accomplished by both parties in this (Laconia) case. Second, citing to NLRB v. Strong, 393 US 357,

359 (1969), the PELRB recited the private sector rule where it is a ULP if a party refuses to sign or accept a CBA which has been negotiated on its behalf. Under the facts of the Laconia case, the Union's refusal to sign a negotiated and ratified agreement constitutes a ULP under RSA 273-A:5 II (d) for failure to negotiate in good faith with the public employer and under RSA 273-A:5 II (g) for failing to reduce to writing as required by RSA 273-A:4. The appropriate remedy is to direct the parties to execute the finalized agreement forthwith.

So ordered.

Signed this 19th day of March, 1993.



PARKER DENACO
Hearing Officer